IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1499 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
KHERUNBEN GULABKHAN PATHAN & ORS

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Appearance :
MR IM PANDYA APP for Appellant
MR M.A. SAPPA for MR LR PATHAN for Opponent Nos 1 - 3, 6,
None for Opponents 4, 5, 7 - 11.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/10/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. M.A. Sappa for learned Advocate Mr. L.R. Nathan waives for respondents No. 1 to 3 and 6 while respondents No. 4, 5 and 7 to 11 are not represented by Advocate. However, having regard to the facts and circumstances of the case, we dispensed with the admission notices to be issued upon Respondents No. 4, 5 and 7 to 11.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Fast Tract Court No.4, Bhavnagar, on 28th of February, 2005, in Sessions Case No. 47 of 1998, whereby all the 10 respondents herein came to be acquitted by the Trial Court for the offenses punishable under Sections 143, 147, 148, 149, 323, 324, 504, 436 and 427 of the Indian Penal Code as well as for the offence punishable under Section 135 of the Bombay Police Act. Original accused No.11 Anwarkhan Gulabkhan died during trial and, therefore, trial was abated as against.

3 As per the prosecution case, the incident occurred at Bhavnagar near Motitalav, Mafatnagar, Kumbharvada, on 5th of March, 1991 at about 19.00 hours. Complaint came to be recorded of

injured Rekhaben Boghabhai at Bhavnagar `A' Division Police Station at 22.15 hours on 5th of March, 1991. According to prosecution case, complainant, her father and mother and brothers were at their house near Kumbharvada and in the evening when her father was milking cow behind their house and her mother was near the cow with calf, accused came with weapons like dharia, sticks, clubs, etc and started abusing Boghabhai, father of the complainant. One of the accused inflicted a dharia blow on the head of Boghabhai and second blow was inflicted on right shoulder. Some other injuries were also caused by club to Boghabhai and, therefore, Boghabhai had fallen on the ground. Accused No.3 Amulakh @ Shetti Bachubhai inflicted dharia blow on Boghabhai, but that was landed on right hand because the blow was parried by Boghabhai. Thereafter, accused No.3 also inflicted a dharia blow on front part of head of Liliben, mother of the complainant. All the accused were beating parents of the complainant. At that time, neighbours Manjuben, Subhanben, Devayat, uncle of complainant, Devshi, etc intervened and accused ran away. The injured were taken to hospital where they got treatment. Thereafter also, according to complainant, accused had entered into the house of complainant and their household goods was burnt. The cause of dispute was some amount, which was due to the complainant from the accused. Crime came to be registered being CR No. 69 of 1991 at Bhavnagar `A' Division

Police Station and investigation was entrusted to N.K. Patel, Police Inspector, Bhavnagar `A' Division Police Station and ultimately a charge sheet came to be filed in the court of Chief Judicial Magistrate, which was registered as Criminal Case No. 2176 of 1991 and the said case thereafter was committed to the Court of Sessions, which was registered as Sessions Case No. 47 of 1998.

4 The learned Additional Sessions Judge, Fast Track Court No.5, to whom, the sessions case was made over, framed charge against all 10 accused on 4th of August, 2004, vide Exhibit – 19. Each of the accused pleaded not guilty and, hence, they were put to trial. Prosecution examined as many as eight witnesses and produced on record voluminous documentary evidence. Thereafter, statements of each of the accused were recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. After hearing prosecution as well as defence, learned Trial Judge came to the conclusion of acquitting the accused and, hence, this Appeal by the State.

5 Learned APP Mr. I.M. Pandya and learned Advocate Mr. M.A. Sappa for learned Advocate Mr. L.R. Pathan requested this Court to hear the matter finally as the Record and Proceedings of the Trial Court is available with this Court and they submitted that they would

assist the court with extra copies of the evidence recorded during the trial and documents produced. Request granted and the matter was heard finally. Learned APP Mr. I.M. Pandya for the State and learned Advocate Mr. M.A. Sappa for learned Advocate Mr. L.R. Pathan were heard in detail in respect of this Appeal.

6 We have gone through the Record and Proceedings carefully and thoroughly. We have considered vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have re-appreciated the evidence recorded during the trial to assess the conclusions arrived at by the Trial Court. We have also examined the reasons assigned by the Trial Court for acquittal. We have taken into consideration the contentions raised by the learned counsels appearing for the parties.

7 Going through the prosecution case threadbare, it clearly appears that injured Boghabhai Rambhai, examined as PW-1 at Exhibit-49 as well as injured Liliben Boghabhai, examined as PW-2 at Exhibit-50, could not support the prosecution case. Both of the witnesses who were injured, stated that a crowd came and quarrel ensued, in which they received injuries. PW-2 further stated that there was a crowd of 25 to 30 persons and she stated that she presumed that accused No.3

inflicted injuries by dharia, but at that time, it was darkness and she could not say with certainty who caused injuries to whom. PW-5 Rekhaben Boghabhai, examined at Exhibit-56, stated that when the incident occurred, she was inside the house and she did not notice any incident. All the three witnesses were declared hostile and PW-5 Rekhaben stated that though she had signed the complaint, but she did not know the contents of the complaint. PW-8 Devayat Kamabhai, examined at Exhibit–62, happens to be an eye witness, but he has not supported the prosecution case and stated before the court that no such incident had taken place in which he was present. He was declared hostile. PW-3 Jagadishbhai Kanjibhai and PW-4 Popat Mavjibhai are panch witnesses of panchnamas at Exhibits 53, 54 and 59 and none of the witnesses have supported the prosecution case. PW-7 Mahebubsha Rahimsha is also panch of panchnama at Exhibit-61, but he has also not supported the prosecution case and all these witnesses were declared hostile. However either the Investigating Officer or any Police Officer who recorded statements could not be examined by the prosecution.

8 The learned Trial Judge appreciated the above evidence and came to the conclusion that there was no iota of evidence against any of the accused to connect them with the crime and, hence, for the above said reasons, the accused came to be acquitted by the Trial Court.

9 While re-appreciating the evidence recorded during the trial and assessing the reasons assigned by the Trial Court, it clearly transpires that none of the prosecution witnesses supported the prosecution case. Even two injured witnesses i.e. PW-1 Boghabhai Rambhai and PW-2 Liliben Boghabhai did not involve any of the accused in the incident. Other eye witnesses PW-6 Idrish Gafarbhai and PW-8 Devayat Kamabhai also did not support the prosecution case and stated that they had not witnessed the incident. Other panch witnesses are hostile to the prosecution and though the panchanamas and medical certificates are produced on record, but they are not of any avail to the prosecution case.

10 This is an Appeal against acquittal and as per the settled principle of law, the order of acquittal should not be lightly interfered with unless it is found that the conclusions arrived at by the Trial Court are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable even if the second view from the same evidence is possible.

11 In view of the discussion above, it clearly appears that the conclusions arrived at by the Trial Court are only conclusion which could be deduced from the evidence recorded and, therefore, the

reasons assigned by the Trial Court are proper and the conclusions arrived at are possible and plausible. In any manner the reasons assigned by the Trial Court cannot be labelled as perverse because the acquittal of the accused by the Trial Judge is the result of proper appreciation of the evidence recorded during the trial. In this view of the matter, there is no substance in the matter and no interference is required in the judgment and order of acquittal impugned in this Appeal and, hence, the following order:

"Appeal stands dismissed".

(J.R. VORA, J.)

(M.R. SHAH, J.)

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